

JUL 10 2000

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 4978
DATE COMPLAINT FILED: February 23, 2000
DATE OF NOTIFICATION: March 1, 2000
DATE ACTIVATED: April 25, 2000

EXPIRATION OF STATUE OF
LIMITATIONS: January 18, 2005
STAFF MEMBER: Jim Moye

COMPLAINANT: Sarah Merrill
RESPONDENTS: Mac Warren for Congress and
Duane B. Starkey, as treasurer
RELEVANT STATUTE: 2 U.S.C. § 441d(a)
INTERNAL REPORTS CHECKED: Disclosure Reports
FEDERAL AGENCIES CHECKED: None

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
2000 JUL 11 A 9 51

I. GENERATION OF MATTER

This matter was generated by a complaint filed on February 23, 2000 by Sarah Merrill ("complainant"). Complainant alleged that she was given two pieces of campaign literature and that such literature did not contain a "paid for" disclaimer. She enclosed the two pieces of campaign literature, both of which were in support of Mac Warren as the Republican Congressional candidate in Texas' 24th Congressional District. After notification of the complaint to Mac Warren for Congress and Duane B. Starkey, its treasurer ("Respondents"), a

sworn response on behalf of the Respondents was received from Mr. Starkey on March 20, 2000.¹

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that all expenditures for communications which expressly advocate the election or defeat of a clearly identified candidate, or expenditures to solicit any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, include a disclaimer. 2 U.S.C. § 441d(a). The disclaimer must clearly state the identity of the person or committee who paid for the communication and whether the communication was authorized by the candidate or the candidate's committee. *Id.* According to 11 C.F.R. § 110.11(a)(1), the disclaimer shall be presented in a clear and conspicuous manner. A disclaimer need not appear on the front of the communication as long as it appears within the communication, except on communications such as billboards that only contain a front face. 11 C.F.R. § 110.11(a)(5)(i).

B. The Complaint

Complainant Sarah Merrill states in her complaint that she is a resident of the 24th Congressional District of Texas. According to the complainant, she "recently received information about a Republican Primary candidate." She avers that she "was given two pieces of literature, one is a mailing brochure and the other is a card asking for a contribution." The

¹ On March 14, 2000, Dorman "Mac" Warren lost the 2000 Republican Party Primary in Texas' 24th Congressional District with 18.4% of the vote. The Committee attempted to file a Termination Report covering the period from 04/01/2000 - 5/25/2000 with the Commission on May 27, 2000. The Reports Analysis Division has not yet certified the Termination Report due to the pendency of this matter.

First General Counsel's Report

complainant continues by stating, "I am filing a complaint because I noticed there was no 'paid for' on them. I would like to know who is really funding this."

The complainant attached to the complaint letter the two pieces of campaign literature she received. The first piece of literature is a tri-fold brochure which outlines Mac Warren's professional qualifications, his stance on selected social issues, asks voters to "VOTE MAC WARREN IN THE REPUBLICAN PRIMARY MARCH 14TH!!!" and includes a quote from Mac Warren on the back cover.² There are no disclaimers on the brochure.

The second piece of literature appears to be a copy of a Mac Warren for Congress campaign contribution request card and envelope. The card states: "Yes, I'll Help Elect Mac Warren Our Next Congressman for the 24th District." The card goes on to give those interested the option of: "Volunteering my time at Headquarters," "Putting a bumper sticker on my car/truck," "Making get-out-the-vote phone calls," "Putting a yard sign on my lawn," "Distributing literature in my neighborhood," "Working the polls on election day," and making a donation of \$1,000, \$500, \$250, \$100, \$50 or other amount. The card also requests personal information from contributors and clearly states that checks be made payable to Mac Warren for Congress. The envelope carries what appears to be a Mac Warren for Congress logo and the designated address for the campaign. Neither the contribution request card nor envelope carry disclaimers.

² The quote on the back of the brochure states: "It is time for a change in Leadership for the 24th Congressional District. The citizens of our district have been overtaxed and over-regulated by the Federal Government for too long. We need a strong Conservative voice in Congress - someone who is dedicated to the principles of personal responsibility and limited government. With your support, I will fight hard to cut taxes, reduce government waste, and eliminate the Federal regulations that hinder prosperity and growth in our Community."

C. The Response

Duane B. Starkey, treasurer of the Mac Warren for Congress Committee, filed the Respondents' response on March 20, 2000 and attached thereto several invoices and disbursements. The response states that, "[t]he complainant, rightfully so, observed that there was no 'paid for' identifier on two pieces of literature, one a mailing brochure and the other a card asking for a contribution for our candidate's campaign."

The response continues that "[t]he lack of this identifier was an unintentional oversight on our part and occurred in our haste and inexperience to accomplish campaign objectives. We simply did not recognize that the identifier was missing." According to the response, neither the printers nor campaign personnel noticed the absence of the disclaimers and "this unintentional error was exacerbated by the use of a third party who stuffed and mailed the material."

The response further states that, "[i]n view of the complainant's request to know who is really funding our campaign and I presume, explicitly, who funded the brochure, the contribution request card, and the payment for mailing, I am enclosing several invoices and disbursements as exhibits showing that these expenditures were properly documented." The attachments include an invoice for the printing of the brochures totaling \$3,445.44; a credit card receipt for payment of the printing of the brochures; an invoice for the printing of 5,000 contribution request cards and envelopes totaling \$434.01; a copy of a campaign account check in the amount of \$434.01 used for payment of the printing of the contribution request cards and envelopes; a receipt from the United States Postal Service for postage totaling \$1,089.00 for mailing the items; and a credit card receipt for payment of the postage. The response avers that all the disbursements had been

"properly recorded in FEC Reports of Receipts and Disbursements filed electronically on January 6, 2000 and February 25, 2000."³

D. Analysis

The Respondents readily admit that the mailing brochures and the contribution request cards at issue were distributed and funded by the Mac Warren for Congress Committee in connection with the 2000 Republican primary in Texas, and that they lacked the required disclaimers. Moreover, Respondents do not dispute that the language on the brochures and cards constituted express advocacy, nor that the cards solicited contributions. The only explanations proffered by Respondents for the "unintentional oversight" to recognize that the materials did not include the disclaimers were "haste" and "inexperience to accomplish the campaign objectives." These explanations are insufficient to excuse the violations, particularly in view of the fact that a review of the Committee's 12 Day Pre-Primary, Amended 12 Day Pre-Primary, 2000 April Quarterly and 2000 Amended April Quarterly Reports, show that the Respondents' expenditures for the brochures, contribution request cards and postage constituted 30.6% of their total primary expenditures. Based on these facts, this Office recommends that the Commission find reason to believe that Mac Warren for Congress and Duane B. Starkey, as treasurer, violated 2 U.S.C. § 441d(a).

³ The Committee electronically filed its 1999 Year End Report on January 6, 2000 and its 2000 12 Day Pre-Primary Report on February 25, 2000. The disbursements in question do not appear to be encompassed in the 1999 Year End Report. The Committee's 2000 12 Day Pre-Primary and Amended 12 Day Pre-Primary Reports disclose disbursements to Creative Type & Graphics totaling \$3,445.44 on January 18, 2000; a disbursement to Vision Printing, Inc. for 5,000 envelopes for donations and 5,000 donation cards totaling \$434.01 on January 18, 2000; and a disbursement to the United States Postal Service totaling \$1,089.00 on February 17, 2000.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY


Because the Commission is now in possession of sufficient information to determine what occurred and what costs were involved, this Office recommends that the Commission offer to enter into conciliation with the Respondents prior to a finding of probable cause to believe. Attached for the Commission's approval is a proposed conciliation agreement. See Attachment 2.

IV. RECOMMENDATIONS

1. Find reason to believe that Mac Warren for Congress and Duane B. Starkey, as treasurer, violated 2 U.S.C. § 441d(a).
2. Approve the attached Factual and Legal Analysis.
3. Approve the proposed conciliation agreement and appropriate letter.

Lawrence M. Noble
General Counsel

7/7/00
Date

BY: 
Lois G. Lerner
Associate General Counsel

Attachments:

1. Factual and Legal Analysis
2. Proposed Conciliation Agreement



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel ACS

DATE: July 11, 2000

SUBJECT: MUR 4978-First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

SENSITIVE

☒

NON-SENSITIVE

☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

DISTRIBUTION

COMPLIANCE

☒

Open/Closed Letters ☐
MUR ☐
DSP ☐

STATUS SHEETS ☐
Enforcement ☐
Litigation ☐
PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARY W. DOVE/VENESHE FEREBEE-VINES *VF*
COMMISSION SECRETARY

DATE: JULY 13, 2000

SUBJECT: MUR 4978 - First General Counsel's Report
dated July 7, 2000.

The above-captioned document was circulated to the Commission
on Tuesday, July 11, 2000.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Mason	<u>XXX</u>
Commissioner McDonald	—
Commissioner Sandstrom	—
Commissioner Smith	<u>XXX</u>
Commissioner Thomas	—
Commissioner Wold	—

This matter will be placed on the meeting agenda for Tuesday,
July 18, 2000. Please notify us who will represent your Division before the
Commission on this matter.